

1 Sheri M. Thome
Nevada Bar No. 8657
2 Chad C. Butterfield
Nevada Bar No. 10532
3 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP
300 South 4th Street, 11th Floor,
4 Las Vegas, NV 89101
Telephone: 702.727.1400
5 Facsimile: 702.727.1401

6 Michael D. Mandel (*pro hac vice* forthcoming)
(California SBN #216934)
7 John A. Van Hook SBN (*pro hac vice* forthcoming)
(California SBN #205067)
8 Jared R. Zeidman (*pro hac vice* forthcoming)
(California SBN #292383)
9 MCGUIREWOODS LLP
1800 Century Park East
10 8th Floor
Los Angeles, CA 90067-1501
11 Telephone: 310.315.8200
Facsimile: 310.315.8210

12 *Attorneys for Defendant*
13 BANK OF AMERICA, N.A.

14 (*Additional counsel appear on following page*)

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 MAUREEN CLARK and SONYA
18 ALEXANDER, individually, and on behalf of
all others similarly situated,

19 Plaintiff,

20 vs.

21 BANK OF AMERICA CORPORATION,

22 Defendant.
23
24
25
26
27
28

CASE NO. 2:16-cv-02228

**STIPULATION AND [PROPOSED]
ORDER TO:**

- (1) **SUBSTITUTE NAMED
DEFENDANT;**
- (2) **DISMISS COMPLAINT THIRD
COUNT;**
- (3) **EXTEND DEFENDANT'S
DEADLINE TO RESPOND TO
COMPLAINT;**
- (4) **EXTEND DEFENDANT'S
DEADLINE TO OPPOSE
PLAINTIFFS' CONDITIONAL
CERTIFICATION MOTION;
AND**
- (5) **TOLL FLSA LIMITATIONS
PERIOD**

(First Request)

Complaint Filed: September 21, 2016

1 Don Springmeyer
Nevada Bar No. 1021
2 Bradley S. Schrager
Nevada Bar No 10217
3 Justin C. Jones
Nevada Bar No. 8519
4 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 E. Russell Road, Second Floor
5 Las Vegas, Nevada 89120
Telephone: 702.341-5200
6 Facsimile: 702.341.5300
dspringmeyer@wrlawyers.com
7 bschrager@wrlawyers.com
jjones@wrlawyers.com
8

9 Kevin J. Stoops (admitted *pro hac vice*)
(Michigan SBN # P64371)

10 Jesse L. Young (admitted *pro hac vice*)
(Michigan SBN # P72614)

11 SOMMERS SCHWARTZ, P.C.

12 One Towne Square, 17th Floor
Southfield, Michigan 48076

13 Telephone: 248.236.5752

Facsimile: 248.936.2143

14 kstoops@sommerspc.com

jyoung@sommerspc.com
15

16 Jason T. Brown (admitted *pro hac vice*)

(New Jersey SBN# 035921996)

17 Nicholas Conlon (admitted *pro hac vice*)

(New Jersey SBN# 034052013)

18 JTB LAW GROUP, LLC

155 2nd Street, Suite 4

19 Jersey City, NJ 07302

Telephone: 201 630.0000

20 jtb@jtblawgroup.com

nicholasconlon@jtblawgroup.com
21

22 *Attorneys for Plaintiffs* MAUREEN CLARK and
SONYA ALEXANDER
23
24
25
26
27
28

RECITALS

On September 21, 2016, Plaintiffs MAUREEN CLARK and SONYA ALEXANDER (“Plaintiffs”) filed a putative class and collective action complaint in the United States District Court, District of Nevada (the “Complaint”). The Complaint names BANK OF AMERICA CORPORATION (“Defendant” or “BAC”) as the sole Defendant and asserts the following three causes of action: (1) Failure to Pay Overtime in Violation of the Fair Labor Standards Act (“FLSA”); (2) Failure to Pay Wages and Overtime in Violation of Common Law along with N.R.S. §§ 608.016, 608.018, and 608.260; and (3) Nationwide Breach of Contract (the “Complaint”).

On November 18, 2016, Plaintiffs filed a Pre-Discovery Motion for Conditional Certification Pursuant to 29 U.S.C. § 216(b) (the “216(b) Motion”). The 216(b) Motion seeks Court approval to issue opt-in notices to the Proposed FLSA Collective Class—namely, “[a]ll current and former hourly customer service agents who worked for Defendant any time after September 20, 2013.”

On November 23, 2016, Plaintiffs personally served the Complaint and the 216(b) Motion on Defendant.

Pursuant to the Federal Rules of Civil Procedure and Nevada Local Rules, BAC’s deadline to respond to the 216(b) Motion is December 7, 2016, and its deadline to file a responsive pleading is December 14, 2016.

On December 1, 2016, counsel for the parties met and conferred to discuss the Complaint, the 216(b) Motion, the responses thereto, and other case management issues. Counsel for Defendant advised that Bank of America, N.A. (“BANA”), not BAC, employed Plaintiffs as well as the putative collective and class members at all relevant times. In addition, counsel discussed Defendant’s intention to file a Motion to Dismiss and/or Strike under Fed. R. Civ. P. §§ 12(b), 12(f) (the “Rule 12 Motion”) with respect to all three claims in the operative Complaint. Counsel also discussed Defendant’s request for extensions/modifications of the deadlines: (1) for

1 Defendant to file its intended Rule 12 Motion or otherwise respond to the Complaint, and (2) for
2 Defendant to oppose the 216(b) Motion.

3 The parties have agreed to the amendments and modifications herein to avoid potentially
4 unnecessary motion practice and requests for court intervention.

5 **STIPULATION**

6 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between
7 Plaintiffs and Defendant, through their respective undersigned counsel of record, that:

- 8 1. Plaintiffs Complaint will be deemed to substitute Bank of America, N.A. for Bank of
9 America Corporation as the sole named defendant in this action;
- 10 2. Plaintiffs will dismiss without prejudice their Third Count for a putative nationwide
11 Rule 23 class action for Breach of Contract;
- 12 3. Defendant shall have until January 4, 2017 (an extension of two weeks) to file a Rule
13 12 Motion or otherwise respond to Plaintiffs' Complaint, to permit further evaluation
14 and meet-and-confer regarding the intended Rule 12 Motion. This is the first request
15 for an extension of time to file a Rule 12 Motion;
- 16 4. Defendant's Opposition to Plaintiffs' 216(b) Motion shall be due two weeks after the
17 Court issues its order on the portions, if any, of Defendant's Rule 12 Motion that seek
18 dismissal of Plaintiffs' FLSA claims.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 5. The statute of limitations for claims under the FLSA by putative collective action
2 members who have not filed consents to join this lawsuit shall be tolled from
3 December 7, 2016 through the date the Court issues its order on Plaintiffs' 216(b)
4 Motion, with further details of such tolling to be described under a separately-executed
5 tolling agreement between the parties.

6 IT IS SO STIPULATED.

9 DATED: December 6, 2016

SOMMERS SCHWARTZ, P.C.

10 By: /s/ Kevn J. Stoops
11 Kevin J. Stoops, Esq.

12 Attorneys for Plaintiffs
13 MAUREEN CLARK and SONYA
ALEXANDER

14 DATED: December 6, 2016

**WILSON ELSEER MOSKOWITZ EDELMAN &
DICKER LLP**

16 By: /s/ Sheri M. Thome
17 Sheri M. Thome, Esq.
18 Chad C. Butterfield, Esq.

19 Attorneys for Defendant
20 BANK OF AMERICA, N.A.

21 IT IS SO ORDERED.

23 Dated this 16 day of December, 2016.

24 
25 Gloria M. Navarro, Chief Judge
26 UNITED STATES DISTRICT COURT JUDGE